IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.Rev.Pet.No. 1960 of 2007(D)

CRA.122/2007 of I ADDL. SESSIONS COURT, PALAKKAD
CC.388/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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REVN. PETITIONER: APPELLANT/ACCUSED

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1. PRABHU BIRCHAND, AGED 28 YEARS,
   S/O.BIRCHAND (LATE), POCKET NAGAR, NAGPUR,
   MAHARASHTRA.

2. BABULAL @ BIJAI,
   AGED 50 YEARS, S/O SEETHARAM MALI,
   POCKET NAGAR, NAGAPUR, MAHARASHTRA.

BY ADV. SRI.JESWIN P.VARGHESE

RESPONDENTS: RESPONDENTS/COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. C.M. NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 1960 OF 2007

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Dated this the 13th day of November, 2007.

ORDER

The revision petitioners, who are the accused in C.C. No.388 of 2006 on the file of Judicial First Class Magistrate, Ottapalam for an offence punishable under Section 420 r/w Section 34 of the Indian Penal Code, challenge the conviction entered and the sentence passed against them concurrently by the courts below for the aforesaid offence. Each of them was sentenced to simple imprisonment for three years for the said offence.

2. The case of the prosecution can be summarised as follows:

In furtherance of their common intention to cheat PW1, a gold smith from Shornur, the accused showed MO1 Ashttapattamani Chain, a spurious ornament representing the same to be made of gold and obtained by them as treasure and induced PW1 to buy the same after handing over 8 gold beads seperated from the gold chain as samples and obtained a sum of Rs.10,000/- as advance and thereafter on 07.05.2006 the

accused gave MO1 spurious ornament weighing 1.600 kg. to PW1 at his residence at Kallippadam and induced him to agree to purchase the spurious ornament for Rs.6 lakhs. The accused have thereby committed an offence punishable under Section 420 r/w Section 34 IPC.

3. Both the courts below accepting the testimony of PWs 1 and 5, convicted both the revision petitioners of the offence referred to above and sentenced each of them to simple imprisonment for three years.

4. PW1 is doing jewellery business at Shornur. The accused persons initially approached him asking for donation for an orphanage at Maharashtra. Both the accused belong to Maharashtra. As PW1 could speak Hindi, there was a conversation between PW1 and the accused and during the said conversation, the accused represented to PW1 that they got a treasure from Thirupathy and had concealed the same and they wanted PW1 to examine the gold chain and confirm whether it was made of pure gold. PW1, who is a jeweller, agreed to examine the ornaments. The accused left PW1 and came back after 10 days. They were at that time having MO1 series of

Ashttapattamani Chain with them. The accused took out 7 beads from the chain and gave them to PW1 for testing after taking an advance of Rs.10,000/-. Getting suspicious, PW1 informed the Sub Inspector of Police (PW5). As per the directions of the Sub Inspector, PW1 represented to the accused that he was willing to buy the ornament for a price of Rs.6 lakhs. Accordingly, on 07.05.2006 the accused persons came over to the house of PW1. As arranged before PW1 passed on the information to PW5, the Sub Inspector of Police, Shornur who kept a watch of the proceedings. PW5 recorded the statement of PW1 and seized the beads entrusted with the PW1 by the accused. This, in fact, is the evidence unravelled by the prosecution.

5. Except receiving Rs.10,000/- as advance for the 8 gold beads allegedly handed over by the accused to PW1, the further case of PW1 that he was induced to agree to buy the gold chain for Rs.6 lakhs, did not materialise. In other words, the accused did not succeed in inducing PW1 to part with Rs.6 lakhs. I am of the view that even though the conviction was rightly recorded by the courts below for the offence punishable under Section 420 IPC, the sentence of simple imprisonment for three years

imposed on the revision petitioners apppears to be disproportionately harsh. It was ascertained though the learned Public Prosecutor as to whether the revision petitioners are involved in other crimes. The learned Public Prosecutor submitted that except for the two cases, the revision petitioeners are not involved in any other crime. Considering the totality of the circumstances, I am of the view that the imprisonment already undergone by the revision petitioners since 08.05.2006 shall be sufficient disincentive for their conviction. Accordingly, the sentence imposed on the revision petitioners by the courts below is modified and the imprisonment already undergone by the revision petitioners shall constitute the sentence under Section 420 r/w Section 34 IPC. The revision petitioners shall be released from prison forthwith unless their continued detention is found necessary in connection with any other case against them.

In the result, the revision is allowed in part confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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